D.B. CIVIL SPECIAL APPEAL (WRIT) NO.630/2006

The State of Raj. & Ors. Vs. Lrs of Sh. Keshar Singh & Ors.

Date : 20.9.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HONBLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. L.R. Upadhyay for the appellant.

Heard learned counsel for the appellant.

Without referring to the facts in detail, which have not been noticed by the learned Single Judge, the core question that fell for consideration before the learned Single Judge was that while the competent authority under the Ceiling Act was to enquire into the nature of transfers made by the holder of the land namely Keshar Singh in favour of Takhat Singh and Umed Singh in pursuance of the directions issued by this Court earlier, to find the bonafide nature of the transfers made by the said Keshar Singh whose ceiling case was under consideration.

The competent officer found that the transfers have been made in favour of Takhat Singh and Umed Singh on identical terms and he has also found the transfers to be bona fide for the purpose of recognition under the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973.

Aggrieved with the aforesaid order passed by the competent officer dated 19.11.1987, an appeal was preferred by the State. The Collector, Sirohi vide his order dated 26.12.1989 accepted the appeal partly by holding that the transfer of land in favour of Shri Takhat Singh was bonafide but the transfer of land in favour of Shri Umed Singh was not bonafide. This finding was based on the ground that Umed Singh himself has not appeared in the witness box during the course of enquiry. Umed Singh's revision against the order of the Collector before the Board of Revenue was unsuccessful when the Board of Revenue vide his order dated 27.8.1991 dismissed the appeal and later on 10.3.1993 the review petition was also dismissed.

The learned Single Judge found that the fact that the said Umed Singh was at the relevant time an employee of the Indian Army and could not have cultivated land personally in physical sense cannot be held against him while other material evidence which clearly reveals that the case of Umed Singh was not distinguishable from the case of Takhat Singh in the matter of transfer of land by Keshar Singh. So also the fact that the registration of the land transferred in favour of Umed Singh has taken place later on in the light of his employment in Indian Army is also held to be no ground to distinguish said transfer from the case of transfer made in favour of Takhat Singh. Thus, the learned Singh Judge found that there being no substantive distinction between the transfer made in favour of Umed Singh by Keshar Singh, then the transfer made in favour of Takhat Singh, the finding of the Collector as well as the Board of Revenue is not sustainable and held them to be perverse.

It is in the aforesaid circumstances, the appeal

before us.

Apparently, in the fact and circumstances lack of any distinction noticed by learned Single Judge between the case of Takhat Singh and Umed Singh are well founded on material referred to by learned single Judge and does not call for any interference.

Therefore, in these circumstances, if the bona fide of Keshar Singh cannot be doubted qua transfer made in favour of Takhat Singh, one fails to comprehend on what basis the transfer in favour of Umed Singh can be doubted.

Accordingly, we do not find any merit in the appeal and the same is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

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